

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1168-2021
	:	
vs.	:	
	:	POST SENTENCE MOTION
JOSHUA SABINS,	:	
Defendant	:	

OPINION

This matter is before the Court on Defendant’s Post-Sentence Motion filed on May 18, 2023, wherein Defendant requests a new trial alleging the verdict was against the weight of the evidence, as well as an Arrest of Judgment alleging the evidence presented at trial was insufficient to convict him of the offenses alleged to have occurred. After careful consideration and for the reasons set forth below, the Court will grant the Defendant’s Post-Sentence Motion in part and deny it in part.

I. Procedural Background

On August 14, 2021, burglary, criminal trespassing, criminal mischief, and related charges were filed against the Defendant. A jury trial was held on February 3, 2023, after which the jury returned a verdict of guilty on Count 2, Criminal Trespass, and Count 4, Criminal Mischief. The Court found the Defendant guilty of Count 5, Harassment, a summary offense. On May 9, 2023, the Defendant was sentenced on Count 2, Criminal Trespass (F2), to pay all costs of prosecution and be placed on probation for a period of four (4) years under the Supervision of the Adult Probation Office of Lycoming County. On Count 4, Criminal Mischief (M3), the Defendant was sentenced to probation for a period of one (1) year, to run concurrent with the sentence imposed on Count 2. Additionally, the

Court sentenced the Defendant to a fine of \$500 on Count 5, Harassment (S).

At sentencing, the Defendant requested a hearing on the issue of restitution, which was held on May 26, 2023. At that time, the Commonwealth withdrew its request for restitution, noting that they had received confirmation from the landlord that the withholding of the victim's security deposit was unrelated to the incident. Defendant filed his Post-Sentence Motion on May 18, 2023, and argument was held on August 23, 2023.

II. Legal Analysis

In his motion, the Defendant requests the following:

a. Motion for New Trial

The Defendant alleges that the verdict rendered by the jury is against the weight of the evidence. "The weight of the evidence is a matter exclusively for the finder of fact, who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." *Commonwealth v. Gonzalez*, 109 A.3d 711, 723 (Pa. Super. 2015). A trial court may only grant a new trial on a weight claim "when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." *Commonwealth v. Clay*, 64 A.3d 1049, 1055 (Pa. 2013).

"[T]o grant a new trial, the trial court must determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts, is to deny justice." *Id.*, quoting *Commonwealth v. Widmer*, 744 A.2d 745, 752 (Pa. 2000). As well, the court may not reweigh the evidence and substitute its judgment for the factfinder. *Commonwealth v. Troy*, 832 A.2d 1089, 1092 (Pa. Super. 2003).

Finally, a verdict is contrary to the evidence such that it shocks one's sense of justice when "the figure of justice totters on her pedestal, or when the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience." *Commonwealth v. Cruz*, 919 A.2d 279, 282 (Pa. Super. 2007).

The Defendant was found guilty of Criminal Trespass pursuant to 18 Pa.C.S. §3503(a)(1)(ii). The jury was instructed that in order to find him guilty, they must find that the Commonwealth proved beyond a reasonable doubt the following elements: (1) that the Defendant broke into 2030 Mill Lane, Apartment 12 by entering by force, breaking, intimidation, unauthorized opening of locks, or through any opening not designed for human access; (2) that the Defendant knew he did not have permission or lawful authority to break into 2030 Mill Lane, Apartment 12; and (3) that 2030 Mill Lane, Apartment 12 was an occupied structure. (Transcript of Proceedings, 3/3/23, pg. 185). The jury was instructed that the Defendant could not be guilty of criminal trespass if they found that the Defendant reasonably believed that the owner or other authorized person would have permitted him to enter or remain. (*Id.*).

The Defendant was also found guilty of Criminal Mischief pursuant to 18 Pa.C.S. §3304(a)(5). The jury was instructed that in order to find the Defendant guilty of criminal mischief, they must find that the Commonwealth proved beyond a reasonable doubt that (1) the Defendant intentionally damaged real or personal property of another; and (2) the Defendant intentionally or recklessly caused a pecuniary loss in excess of \$500.

At the trial, the victim testified that she and the Defendant were in an on-again/off-

again relationship and that on August 14, 2021, she picked the Defendant up from a bar and took him to her home. (T. P., 3/3/23, pg. 20, 21). While there, the Defendant was intoxicated, became sick, and referred to the victim by another woman's name. (Id. at 20). The victim testified "I told him, um, that he had to leave. After I saw the previous messages with his other ex-girlfriend, I said , I don't care how you got home, that's on you. You can walk. You're just not staying here. You're not staying on the couch and he refused. I kept yelling at him, telling him that he had to leave, I didn't want him there anymore, and he finally agreed to leave if he could find his wallet." (Id. at 27). The victim testified that she walked outside the apartment to her car, retrieved the wallet, handed it to the Defendant and walked back inside. She indicated, "[H]e was still standing there for a couple of seconds so he wasn't right behind me. He was a couple steps behind. Once I got into my apartment I closed the front door and I locked it because at that point he had no reason to be in there anymore." (Id. at 29).

When asked by counsel if the Defendant watched her close the door, the victim testified, "[a]s far as I know, he was watching me close the door." (Id.). The victim further testified that the Defendant began banging on the door so she went upstairs "and that's when the banging got more frequent and heavier, and it sounded like he was about to break my door in so that's when I called the police." (Id. at 30). The victim testified that her door contained a dead bolt lock and that she put the dead bolt on when she came in. The Commonwealth presented photographs of the damages to the door resulting from the Defendant's actions. The victim testified "[t]he actual lock itself was the dead bolt and that couldn't be locked because the metal piece that held the lock into the frame was broken off"

and “there’s wood paneling, the frame of the door was supposed to be there. That was knocked off. This is the – the drywall was knocked off.” (Id. at 34-35). Between the incident and the trial, the victim moved out of the apartment. She testified “the front door still is not fixed. . . they did keep my safety deposit to fix the damages.” (Id. at 37). The victim testified that her unreturned security deposit was \$1,100. (Id.).

Officer Yoas with the Lycoming Regional Police Department testified that he took pictures of the victim’s home, and when questioned about whether there was “significant damage” he responded “[y]es.” (Id. at 114). He testified that the door was unable to be locked because “[t]he deadbolt is what actually locks the door into the door frame. A portion of the frame is no longer there.” (Id.). He further described seeing broken trim around the door and wet footprints. When asked if this was consistent with forced entry, Officer Yoas responded “from my experience as you can obviously see from the pictures, it is not something that an individual is wanted in that residence. And it looks like an individual may have forced their way into the residence.” (Id. at 116).

At the trial on February 3, 2023, the jury listened to all of the evidence presented, followed the instructions given by the Court, and ultimately found the Defendant guilty of Criminal Trespass and Criminal Mischief while acquitting him of the other crimes charged. Although the victim initially consented to the Defendant being in the apartment, the jury clearly believed that the privilege was revoked at some point during the night by the victim’s words and actions. The jury, as the finders of fact, gave the evidence the weight they thought it deserved and the Court does not find their rendering a verdict of guilty on the counts of Criminal Trespass and Criminal Mischief would shock the judicial conscience to such an

extent that the Defendant is entitled to a new trial.

III. Motion for Judgment of Acquittal/Arrest of Judgment

The Defendant argues that the Commonwealth failed to present sufficient evidence to convict him of the offenses alleged to have occurred on August 14, 2021. As discussed in the preceding section, the evidence presented was more than sufficient to sustain the finding of guilt for Criminal Trespass and Criminal Mischief. With regard to whether the Defendant knew he was licensed/privileged to enter the apartment, the fact that the victim repeatedly told him he had to leave and his breaking through a locked door is sufficient evidence to know that he was no longer welcome at the apartment. The testimony of the victim and Officer Yoas, as well as pictures of the door on the night of the incident, are sufficient to show that there was damage to the victim's property.

Accordingly, the Court finds that the Commonwealth provided sufficient evidence for the jury to find that the Defendant committed both Criminal Trespass and Criminal Mischief. However, the Criminal Mischief count was graded as an M2 due to the testimony that the victim's security deposit of \$1000 was withheld as a result of the damage caused by the Defendant to the door. With the Commonwealth's withdrawal of the claim for restitution and no specific testimony elicited about the actual valuation of the damage, the Court is constrained to regrade the offense from a misdemeanor of the third degree to a summary offense.

For the reasons set forth above, the Defendant has not persuaded the Court that he is entitled to a new trial as a result of Court error, nor that his Motion for Judgment of Acquittal should be granted. The Court finds that the Defendant is entitled to an Arrest of

Judgment with respect to Count 4, Criminal Mischief, and will therefore enter the following Order.

ORDER

AND NOW, this 25th day of **September, 2023**, upon consideration of Defendant's Post Sentence Motion, and for the reasons set forth above, Defendant's Motion for a New Trial is **DENIED**. Defendant's Motion for Judgment of Acquittal is **DENIED**. Defendant's Motion for Arrest of Judgment is **GRANTED IN PART** with respect to Count 4, Criminal Mischief. The Sentencing Order dated May 9, 2023, and docketed on May 7, 2023, is **AMENDED** to indicate that on Count 4, Criminal Mischief, a summary offense, the sentence of the Court is that the Defendant shall pay a fine in the amount of \$100.00.

By the Court,

Ryan M. Tira, Judge

RMT/jel

CC: DA – Joseph Ruby, Esquire
PD – Taylor Paulhamus, Esquire
Gary Weber, Esq.
Jennifer E. Linn, Esquire